

United States District Court
Southern District of West Virginia (Beckley)
CIVIL DOCKET FOR CASE #: 5:14-cv-25740

Branch Banking and Trust Company v. The Tractor Company, Inc.
Assigned to: Judge Irene C. Berger
Demand: \$2,640,000
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 09/12/2014
Jury Demand: None
Nature of Suit: 140 Negotiable Instrument
Jurisdiction: Diversity

Plaintiff

Branch Banking and Trust Company
a North Carolina banking corporation

represented by **Angela D. Herdman**
SPILMAN THOMAS & BATTLE
P. O. Box 273
Charleston, WV 25321-0273
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Fax: 304/340-3801
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
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V.

Defendant

The Tractor Company, Inc.
a West Virginia corporation

represented by **Christopher S. Smith**
HOYER HOYER & SMITH
22 Capitol Street
Charleston, WV 25301
304/344-9821
Fax: 304/344-9519
Email: chris@hhsmlaw.com
LEAD ATTORNEY
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James R. Cooney
ROBERT O. LAMPL LAW OFFICE
960 Penn Avenue
Suite 1200
Pittsburgh, PA 15222
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
HOYER HOYER & SMITH
22 Capitol Street

EXHIBIT A

Charleston, WV 25301
304/344-9821
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert O. Lampl
960 Penn Avenue, Suite 1200
Pittsburgh, PA 15222
412/392-0330
Fax: 412/392-0335
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Joe D. Ison
and

represented by **Christopher S. Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James R. Cooney
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert O. Lampl
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

William E. Connolly
individually

represented by **Christopher S. Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James R. Cooney
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert O. Lampl
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

William E. Connolly
individually
TERMINATED: 01/29/2015

represented by **Christopher S. Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

The Tractor Company, Inc.
a West Virginia corporation
TERMINATED: 01/29/2015

represented by **Christopher S. Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

Joe D. Ison
and
TERMINATED: 01/29/2015

represented by **Christopher S. Smith**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicola D. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

Branch Banking and Trust Company
a North Carolina banking corporation
TERMINATED: 01/29/2015

represented by **Angela D. Herdman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David A. Bosak
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/12/2014	1	VERIFIED COMPLAINT. Filing Fee \$400.00. Receipt # 0425-3442583. (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Exhibit(s) B, # <u>3</u> Exhibit(s) C, # <u>4</u> Exhibit(s) D, # <u>5</u> Exhibit(s) E, # <u>6</u> Exhibit(s) F, # <u>7</u> Exhibit(s) G, # <u>8</u> Exhibit(s) H, # <u>9</u> Exhibit(s) I, # <u>10</u> Exhibit(s) J, # <u>11</u> Exhibit(s) K, # <u>12</u> Exhibit(s) L, # <u>13</u> Exhibit(s) M, # <u>14</u> Exhibit(s) N, # <u>15</u> Exhibit(s) O, # <u>16</u> Exhibit(s) P, # <u>17</u> Exhibit(s) Q, # <u>18</u> Exhibit(s) R, # <u>19</u> Exhibit(s) S, # <u>20</u> Exhibit(s) T, # <u>21</u> Exhibit(s) U, # <u>22</u> Exhibit(s) V, # <u>23</u> Exhibit(s) W, # <u>24</u> Exhibit(s) X, # <u>25</u> Exhibit(s) Y, # <u>26</u> Exhibit(s) Z, # <u>27</u> Exhibit(s) AA, # <u>28</u> Exhibit(s) BB, # <u>29</u> Exhibit(s) CC, # <u>30</u> Exhibit(s) DD, # <u>31</u> Exhibit(s) EE, # <u>32</u> Exhibit(s) FF, # <u>33</u> Exhibit(s) GG, # <u>34</u> Exhibit(s) HH, # <u>35</u> Exhibit(s) II, # <u>36</u> Exhibit(s) JJ, # <u>37</u> Civil Cover Sheet) (msa) (Entered: 09/15/2014)

09/12/2014		CASE assigned to Judge Irene C. Berger. (ras) (Entered: 09/15/2014)
09/15/2014	<u>2</u>	STANDING ORDER IN RE: ASSIGNMENT AND REFERRAL OF CIVIL ACTIONS AND MATTERS TO MAGISTRATE JUDGES ENTERED MAY 7, 2014. Discovery referred to Magistrate Judge VanDervort. (cc:attys; any unrepresented party) (msa)
09/15/2014	<u>3</u>	SUMMONS SUBMITTED by Branch Banking and Trust Company for The Tractor Company, Inc., re: <u>1</u> Complaint,,, (Herdman, Angela)
09/15/2014	<u>4</u>	SUMMONS SUBMITTED by Branch Banking and Trust Company for Joe D. Ison, re: <u>1</u> Complaint,,, (Herdman, Angela)
09/15/2014	<u>5</u>	SUMMONS SUBMITTED by Branch Banking and Trust Company for William E. Connolly, re: <u>1</u> Complaint,,, (Herdman, Angela)
09/15/2014	<u>6</u>	DISCLOSURE STATEMENT PURSUANT TO RULE 7.1, Federal Rules of Civil Procedure, by Plaintiff Branch Banking and Trust Company (Herdman, Angela)
09/16/2014	<u>7</u>	ELECTRONIC SUMMONS ISSUED as to William E. Connolly, Joe D. Ison, and The Tractor Company, Inc., re: <u>1</u> Complaint,,, Summons returnable 21 days. Instructions to Counsel: This is your electronic summons. Please print as many copies of the Summons and Complaint as are necessary to effectuate service under Fed. R. Civ. P. 4. See Proof of Service page of this Summons form for filing a return of service if required by Fed. R. Civ. P. 4(j). (Attachments: # <u>1</u> Summons for Joe Ison, # <u>2</u> Summons for William Connolly) (slr)
09/25/2014	<u>8</u>	SUMMONS RETURNED EXECUTED BY SECRETARY OF STATE re: <u>7</u> Electronic Summons Issued, on <u>1</u> Complaint. Accepted by Secretary of State on 9/23/2014 as to The Tractor Company, Inc. ; answer due 10/14/2014. (slr)
09/25/2014	<u>9</u>	SUMMONS RETURNED EXECUTED BY SECRETARY OF STATE re: <u>7</u> Electronic Summons Issued, on <u>1</u> Complaint. Accepted by Secretary of State on 9/23/2014 as to William E. Connolly ; answer due 10/14/2014. (slr)
10/15/2014	<u>10</u>	MOTION by William E. Connolly, Joe D. Ison, The Tractor Company, Inc. for Enlargement of Time to File a Responsive Pleading to the <u>1</u> Complaint to November 14, 2014 (Attachment: # <u>1</u> Proposed Order)(Smith, Christopher)
10/22/2014	<u>11</u>	ORDER: The Court ORDERS that the <u>10</u> MOTION for Enlargement of Time to File a Responsive Pleading be GRANTED; Defendants shall have until the close of business on 10/28/2014 to file an answer or responsive pleading. Signed by Judge Irene C. Berger on 10/22/2014. (cc: attys; any unrepresented party) (slr)
10/28/2014	<u>12</u>	ANSWER TO <u>1</u> Complaint by William E. Connolly, The Tractor Company, Inc., Joe D. Ison and COUNTERCLAIM by Defendants William E. Connolly, The Tractor Company, Inc., Joe D. Ison against Plaintiff Branch Banking and Trust Company.(Smith, Nicola)
10/29/2014	<u>13</u>	ORDER AND NOTICE: Rule 12(b) Motions 11/28/2014. Rule 26(f) Meeting 12/10/2014. Last day to file report of Rule 26(f) Meeting 12/17/2014. Scheduling Conference at 2:00 PM on 1/7/2015 in Beckley. Entry of Scheduling Order 1/20/2015. Last Day to make Rule 26(a)(1) disclosures 1/23/2015. Signed by Judge Irene C. Berger on 10/29/2014. (cc:attys; any unrepresented party) (slr)
11/18/2014	<u>14</u>	MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Herdman, Angela)
11/18/2014	<u>15</u>	MEMORANDUM by Branch Banking and Trust Company in support of <u>14</u> MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Herdman, Angela)
11/18/2014	<u>16</u>	ANSWER TO <u>12</u> Counterclaim by Branch Banking and Trust Company.(Herdman, Angela)
11/19/2014	<u>17</u>	MOTION by William E. Connolly, Joe D. Ison, The Tractor Company, Inc. to Strike <u>14</u> MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Attachment: # <u>1</u> Proposed Order)(Smith, Christopher)

11/21/2014	<u>18</u>	RESPONSE by Branch Banking and Trust Company in opposition to <u>17</u> MOTION by William E. Connolly, Joe D. Ison, The Tractor Company, Inc. to Strike <u>14</u> MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Herdman, Angela)
11/24/2014	<u>19</u>	STATEMENT OF VISITING ATTORNEY from James R. Cooney on behalf of William E. Connolly, The Tractor Company, Inc., Joe D. Ison. Local counsel: Christopher S. Smith. (cds)
11/24/2014	<u>20</u>	VERIFIED STATEMENT of James R. Cooney. (cds)
11/24/2014	<u>21</u>	PRO HAC VICE FEE in the sum of \$50.00 received from James R. Cooney. Receipt Number CHAR008485. (cc: Administrative Services) (cds)
11/24/2014	<u>22</u>	STATEMENT OF VISITING ATTORNEY from Robert O. Lampl on behalf of William E. Connolly, The Tractor Company, Inc., Joe D. Ison. Local counsel: Christopher S. Smith. (cds)
11/24/2014	<u>23</u>	VERIFIED STATEMENT of Robert O. Lampl. (cds)
11/24/2014	<u>24</u>	PRO HAC VICE FEE in the sum of \$50.00 received from Robert O. Lampl. Receipt Number CHAR008485. (cc: Administrative Services) (cds)
12/02/2014	<u>25</u>	RESPONSE by William E. Connolly, Joe D. Ison, The Tractor Company, Inc. in opposition to <u>14</u> MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Smith, Christopher)
12/02/2014	<u>26</u>	MEMORANDUM by William E. Connolly, Joe D. Ison, The Tractor Company, Inc. in opposition to <u>14</u> MOTION by Branch Banking and Trust Company to Dismiss <u>12</u> Counterclaim (Attachment: # <u>1</u> Exhibit A)(Smith, Christopher)
12/05/2014	<u>27</u>	REPLY by Branch Banking and Trust Company to <u>26</u> Memorandum In Opposition. (Herdman, Angela) (Modified on 12/6/2014 to convert event to reply to response and to correct link to #26 memorandum) (skh).
12/11/2014	<u>28</u>	ORDER: It is ORDERED that the Defendants' <u>17</u> MOTION to Strike Branch Banking and Trust Company's Motion to Dismiss Counterclaim be DENIED. Signed by Judge Irene C. Berger on 12/11/2014. (cc: attys; any unrepresented party) (slr)
12/17/2014	<u>29</u>	RULE 26(f) REPORT OF PLANNING MEETING by Branch Banking and Trust Company, William E. Connolly, Joe D. Ison, The Tractor Company, Inc. (Herdman, Angela) (Modified on 12/17/2014 to add party filers) (skh).
12/18/2014	<u>30</u>	SCEDULING ORDER: The Court ORDERS that the Scheduling Conference previously set for 1/7/2015 is CANCELLED; it is ORDERED that this case shall proceed as follows: Joinder of Parties, amended pleadings due by 3/10/2015. Discovery requests to be completed by 8/3/2015 and all depositions by 9/15/2015. Expert Witness List by parties bearing the burden of proof due by 4/30/2015, by party not bearing burden of proof due by 6/1/2015, and to solely contradict or rebut evidence due by 6/19/2015. Dispositive Motions except those filed under Rule 12(b) due by 9/30/2015. Motions in Limine to be filed by 11/27/2015, with responses due by 12/4/2015. Plaintiff's portion of proposed Pretrial Order to defendants due by 12/14/2015. Proposed Integrated Pretrial Order due by 12/21/2015. Pretrial Conference set for 1/6/2016 at 1:30 PM in Beckley before Judge Irene C. Berger. Proposed Findings of Fact and Conclusions of Law due by 1/11/2016. Final Settlement Conference at 1:30 PM on 1/13/2016 in Beckley. Bench Trial set for 1/25/2016 at 9:00 AM in Beckley before Judge Irene C. Berger. Signed by Judge Irene C. Berger on 12/18/2014. (cc:attys; any unrepresented party) (slr)
01/22/2015	<u>31</u>	CERTIFICATE OF SERVICE by Branch Banking and Trust Company for Rule 26(a)(1) Initial Disclosures. (Herdman, Angela)
01/29/2015	<u>32</u>	MEMORANDUM OPINION AND ORDER: For the reasons and findings articulated herein, the Court hereby ORDERS that the Plaintiff Branch Banking and Trust Company's <u>14</u> MOTION to Dismiss Defendants' Counterclaim be GRANTED and that Defendants' Counterclaim be DISMISSED WITH PREJUDICE. Signed by Judge Irene C. Berger on 1/29/2015. (cc: attys; any unrepresented party) (msa)
03/20/2015	<u>33</u>	

		CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents to The Tractor Company, Inc. (Herdman, Angela)
03/20/2015	<u>34</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents to Joe D. Ison (Herdman, Angela)
03/20/2015	<u>35</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents to William E. Connolly (Herdman, Angela)
04/30/2015	<u>36</u>	CERTIFICATE OF SERVICE by Branch Banking and Trust Company for Rule 26(a)(2) Expert Testimony Disclosures. (Herdman, Angela)
05/05/2015	<u>37</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's Second Set of Requests for Admission to William E. Connolly (Herdman, Angela)
05/05/2015	<u>38</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's Second Set of Requests for Admission to Joe D. Ison (Herdman, Angela)
05/05/2015	<u>39</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's Second Set of Requests for Admission to The Tractor Company, Inc. (Herdman, Angela)
06/08/2015	<u>40</u>	AMENDED CERTIFICATE OF SERVICE by Branch Banking and Trust Company for Rule 26 (a)(2) Expert Testimony Disclosures. (Herdman, Angela) (Modified on 6/9/2015 to add "amended") (taq).
06/09/2015	<u>41</u>	SECOND CERTIFICATE OF SERVICE by Branch Banking and Trust Company for Rule 26(a) (2) Expert Testimony Disclosures. (Herdman, Angela) (Modified on 6/16/2015 to add "second") (taq).
07/02/2015	<u>42</u>	CERTIFICATE OF SERVICE filed by Branch Banking and Trust Company for Plaintiff Branch Banking and Trust Company's Responses to First Set of Interrogatories and Requests for Production of Documents Directed to Branch Banking and Trust Company (Herdman, Angela)
07/27/2015	<u>43</u>	NOTICE TO TAKE RULE 30(B)(6) VIDEO DEPOSITION by Branch Banking and Trust Company of Defendant The Tractor Company, Inc. on a date and time to be determined (Herdman, Angela) (Modified text on 7/28/2015 for clarity)(taq).
08/06/2015	<u>44</u>	AMENDED NOTICE TO TAKE RULE 30(B)(6) VIDEO DEPOSITION by Branch Banking and Trust Company of William E. Connolly on August 26, 2015 at 11:00 a.m. (Herdman, Angela)
09/29/2015	<u>45</u>	MOTION by Branch Banking and Trust Company for Summary Judgment (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L)(Herdman, Angela)
09/29/2015	<u>46</u>	MEMORANDUM OF LAW by Branch Banking and Trust Company in support of <u>45</u> MOTION by Branch Banking and Trust Company for Summary Judgment (Herdman, Angela)
10/08/2015	<u>47</u>	PROPOSED ORDER Stipulated Consent Order by The Tractor Company, Inc., Branch Banking and Trust Company, William E. Connolly, Joe D. Ison (Smith, Christopher) (Modified on 10/8/2015 to add party filers)(skh).
10/09/2015	<u>48</u>	ORDER: The Court has reviewed the parties' <u>47</u> Stipulated Consent Order, construed as a motion to extend deadlines. Finding that the parties have failed to set forth good cause for the requested extensions, the Court ORDERS that the Stipulated Consent Order, construed as a motion to extend deadlines, be DENIED. Signed by Judge Irene C. Berger on 10/9/2015. (cc: attys; any unrepresented party) (msa)

10/14/2015	<u>49</u>	RESPONSE by William E. Connolly, The Tractor Company, Inc., Joe D. Ison to <u>45</u> MOTION by Branch Banking and Trust Company for Summary Judgment (Attachment: # <u>1</u> Exhibit A)(Smith, Christopher) (Modified on 10/14/2015 to add party filers) (skh).
10/14/2015	<u>50</u>	MEMORANDUM OF LAW by William E. Connolly, The Tractor Company, Inc., Joe D. Ison in opposition to <u>45</u> MOTION by Branch Banking and Trust Company for Summary Judgment (Smith, Christopher) (Modified on 10/14/2015 to add party filers) (skh).
10/20/2015	<u>51</u>	REPLY by Branch Banking and Trust Company to <u>49</u> Response to Motion for Summary Judgment. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Herdman, Angela)
10/21/2015	<u>52</u>	SUGGESTION OF BANKRUPTCY UPON THE RECORD as to The Tractor Company, Inc. (Smith, Christopher)
10/29/2015	<u>53</u>	ORDER: The Court has reviewed the <u>52</u> Suggestion of Bankruptcy Upon the Record filed by the Defendant, The Tractor Company, Inc. on 10/21/2015. In light of this filing, the Court ORDERS that all parties to the above-styled action submit filings articulating their position with respect to the necessity of a stay for any or all portions of the action against any or all Defendants. Signed by Judge Irene C. Berger on 10/29/2015. (cc: attys; any unrepresented party) (msa)
11/03/2015	<u>54</u>	POSITION STATEMENT ON STAY OF LITIGATION DUE TO BANKRUPTCY by Branch Banking and Trust Company in Response to the Court's <u>53</u> Order. (Attachment: # <u>1</u> Exhibit A) (Herdman, Angela)

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